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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re DAVID ROBERT ELKINS

on Habeas Corpus.

G041289

(Super. Ct. No. 06CF1793)

O P I N I O N

Original proceedings; petition for a writ of habeas corpus to permit the filing of a late notice of appeal to challenge a judgment of the Superior Court of Orange County, Richard F. Toohey, Judge. Petition granted.

Randall B. Bookout for Petitioner.

Edmund G. Brown, Jr., Attorney General, and Gary W. Schons, Senior Assistant Attorney General, for Respondent.

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THE COURT:\*

Following his conviction and sentencing to 30 years to life for second degree murder, petitioner David Robert Elkins told his trial counsel he wanted to file a notice of appeal. Counsel Roger Sheaks agreed to file one but states in his declaration in support of the petition that he never did for “some inexplicable reason.” This petition for relief was filed within a relatively short period after petitioner first became aware the notice of appeal had not been filed. (*In re Benoit* (1973) 10 Cal.3d 72.)

The Attorney General was served with a copy of the petition. He advises us that he does not oppose the relief requested.

The principle of constructive filing of a notice of appeal in a criminal case should be applied in situations where, as here, defendant asks trial counsel to file a notice of appeal on defendant’s behalf, counsel agrees to file such notice, but counsel fails to do so for no apparent reason. (*In re Benoit, supra*, 10 Cal.3d at pp. 87-88; see Pen. Code, § 1240.1, subd. (b).)

Good cause appearing, and the Attorney General having effectively waived the necessity of issuing an order to show cause, the petition for relief is granted. On petitioner’s behalf, attorney Randall B. Bookout is directed to prepare and file a notice of appeal in Orange County Superior Court case number 06CF1793, and the clerk of the superior court is directed to accept the notice for filing, if it is presented within 20 days of this opinion becoming final. In the interests of justice, this opinion is deemed final forthwith.

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\* Before Sills, P. J., Rylaarsdam, J., and Fybel, J.